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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FERNANDO MOORE,

Petitioner - Appellant,

v.

STATE OF OREGON,

Respondent - Appellee.

No. 08-35160

D.C. No. CV-05-00603-AA

MEMORANDUM \*

Appeal from the United States District Court  
for the District of Oregon  
Ann L. Aiken, District Judge, Presiding

Submitted February 2, 2009\*\*  
Portland, Oregon

Before: PAEZ and RAWLINSON, Circuit Judges, and JENKINS \*\*\*, District Judge.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable Bruce S. Jenkins, Senior United States District Judge for the District of Utah, sitting by designation.

Appellant Fernando Moore (Moore) appeals the district court's dismissal of his petition for writ of habeas corpus seeking relief from his Oregon state conviction and 100-month sentence for sodomy.

Because Moore had no right to counsel at the post-conviction stage, *see Smith v. Baldwin*, 510 F.3d 1127, 1146-47 (9th Cir. 2007) (en banc), any ineffectiveness of his post-conviction counsel could not be imputed to the state for the purpose of demonstrating an external cause for Moore's procedural default. *See Coleman v. Thompson*, 501 U.S. 722, 754 (1991). Therefore, Moore failed to establish that the cause for his procedural default is "something that cannot fairly be attributed to him . . ." *Id.* at 753. Because Moore failed to demonstrate sufficient cause to excuse his procedural default, "we need not address whether he has shown prejudice with respect to [his] claim[s]." *Smith*, 510 F.3d at 1147.

**AFFIRMED.**